

THE
PEOPLE

THE
BEST GOVERNORS:
OR A
PLAN OF GOVERNMENT
FOUNDED ON THE JUST PRINCIPLES OF
NATURAL FREEDOM.

PRINTED IN M,DCC,LXXVI

THE PEOPLE

THE

BEST GOVERNORS

OF

PLANS OF GOVERNMENT



NATURAL FREEDOM

EDINBURGH

THE PREFACE.

It was observed by Sir William Temple, that none can be said to know things well, who do not know them in their beginnings. There are many very noisy about liberty, but are aiming at nothing more than personal grandeur and power. Are not many, under the delusive character of Guardians of their country, collecting influence and honour only for oppression? Behold Cæsar! at first a patriot, a consul, and commander of the Roman army. How apparently noble his intentions, and how specious his conduct! but unbounded in his ambition, by these means he became, at length, a perpetual dictator, and an unlimited commander.

God gave mankind freedom by nature, made every man equal to his neighbour, and has virtually enjoined them, to govern themselves by their own laws. The government, which he introduced among his people, the Jews, abundantly proves it, and they might have continued in that state of liberty, had they not desired a King. The people best know their own wants and necessities, and therefore, are best able to rule themselves. Tent makers, cobblers and common tradesmen, composed the legislature at Athens. "Is not the body (said Socrates) of the Athenian people composed of men like these?"

THAT I might help, in some measure, to eradicate the notion of arbitrary power, heretofore drank in; and to establish the liberties of the people of this country upon a more generous footing, is the design of the following impartial work, now dedicated by the Author to the honest farmer and citizen.

THE

PEOPLE *the best* GOVERNORS, &c.

THE just power of a free people respects first the making and secondly the executing of laws. The liberties of a people are chiefly, I may say entirely guarded, by having the controul of these two branches in their own hands.

MANY have been the disputes as to the best way of civil government. The Athenians boasted of their popular assemblies; the Aetolians of their representatives, whom they termed the Panætolium; and as for the Romans, they had a more complicated plan, viz. their consuls, the senate, and plebeians.

I AM not to examine into the advantages of a popular, or a representative government---in this case we are to consult the situation, and number of the inhabitants. Were the people of the different counties numerous and wealthy enough, with that degree of knowledge, which is common in many parts of the continent, every freeman might then have a hand in making laws to govern himself by, as well as in appointing the persons to execute them; but the people of these states are very unequally and thinly settled, which puts us upon seeking some mode of governing by a representative body. The freeman give up in this way just so much of their natural right as they find absolutely convenient, on account of the disadvantages in their personal acting. The question now arises, how far they can with safety deposit this power of theirs into other hands? To this I answer: That where there are representatives who hold the legislature, their power ought never to extend any farther than barely the making of laws. For what matters it, whether they themselves execute the laws, or appoint persons to do it in their stead, since these very persons, being only creatures of their own appointment, will be induced by interest to act agreeable to their will and pleasure. Indeed upon this plan the greatest corruption may take place---for should there be in some important affairs very unjust decisions, where could the injury gain redress? Iniquity might be supported by the execution.

ers of it ; they out of the reach of the people, from whom they do not derive their authority ; and the legislative body, as they are not the immediate perpetrators, may be often screened from just reproach.

PERHAPS it will be said by some, that the people are sufficiently guarded against infringements of this nature, as their representatives are chosen only for a certain time, may be called to an account for any misconduct in their business, and withal are liable to be turned out by their constituents at any time. There is indeed something plausible in all this ; but it will vanish when we consider that these representatives, while they act as such, being supreme in legislation, and the appointing and supporting the executors of law, may, by these advantages, assume to themselves a lasting unlimited power. And I beg of any one to tell me what will prevent it, if they have only art, and are generally agreed among themselves.

BUT it seems there is another objection started by some : That the common people are not under so good advantages to choose judges, sheriffs, and other executive officers as their representatives are. This is a mere delusion, which many have taken in, and, if I may be allowed a vulgar expression, the objectors in this instance put the cart before the horse. For they say, that the people have wisdom and knowledge enough to appoint proper persons through a state to make laws, but not to execute them. It is much easier to execute, than to make and regulate the system of laws, and upon this single consideration the force of the objection falls : The more simple, and the more immediately dependent (*ceteris paribus*) the authority is upon the people the better, because it must be granted that they themselves are the best guardians of their own liberties.

2dly, UPON the above principles we will proceed farther, and say, that if there be a distinct negative power over those that enact the laws, it can by no means be derived from them as representatives of the people, and for these reasons : As far as there is any power over the rights of the people, so far they themselves are divested of it. Now by chusing representatives to make laws for them, they put that power out of their own hands ; yet they do not deposit it into the hands of their representatives to give to others, but to exercise it in their room and stead.---Therefore, I say, for the representatives to appoint a council with a negative authority, is to give

away that power which they have no right to do ; because they themselves derived it from the people.

Again, there is a palpable contradiction implied ; for this negative power, if it cannot be called legislative, has at least, such weight in the legislature, as to be the unlimited *vis qua non* *. These therefore, who act as a council or negative body make use of a power in the room of the people, and consequently represent them so far as their power extends. In fine, to say that the legislative body can appoint them, is as absurd as to say that the representatives have a right to appoint the representatives of the people.

3dly, It appears now that the representatives have no right to enlarge their power which they have received, nor to alter or put any incumbrance upon it, by making a negative body. The common people, and consequently their representatives, may not happen to be so learned and knowing as some others in a state ; and as the latter are bound to their constituents to act by the best light they can get, they may, if they please, chuse a council, barely to give advice, and to prepare matters for their consideration ; but not to negative, which is a contradiction in terms. Agreeable to this observation was the government at Athens : The council consisted of 400 persons, and in a legislative capacity, could only advise, and prepare matters for the consideration of the people.

BUT it will be enquired, whether the inhabitants themselves through a state cannot consistently make a negating body over those that form the laws : To this I answer, that there is no real absurdity in their taking such a step : But upon this plan those that are called representatives, have only a partial right as such ; for they have a delegated power from the people to act no farther than this negative body concurs. Now this said negative body are likewise virtually the representatives of the people, and derive just so much authority from them, as will make up the defect of the others, viz. that of confirming. They have been generally named a council in our American States, though they have really acted in a legislative capacity, and seem rather to answer the idea of a *senate*, which was hereditary at Rome, but here elective.

* A restraining power.

WHERE there is such a body of men appointed, it is best, that there should be but few in number, and chosen by the people at large through the government. At least that there should not be districts marked out, and the plan fixed, that the inhabitants in the respective counties may chose just so many, only in proportion to their present number, without any regard to the future increase of the people---rather let the same principles of an equal partition of land, settling, and settled, take place in this matter, as we shall point out under the next head, when we speak of representation.

To conclude, I do not say that it is expedient, to choose a senate, if I may so call it, with such a negative power as before mentioned ; but rather propose, whether a council of advice would not answer better purposes, and that inequality be thereby prevented, which is sometimes occasioned by two distinct fountains of power.

4thly, We will next lay open the nature and right of jurisdiction more clearly, in examining the best standard, by which representation may be regulated. In the first place, it is asserted by some, that representation ought to be enlarged or diminished, in proportion to the amount of taxes in the different parts of a state ; but such a procedure would be very unreasonable. For taxation only respects property, without regard to the liberties of a person : And, if representation should be wholly limited by that, the man, who owns six times as much as another, would consequently have six times the power, though their natural right to freedom is the same ; Nature itself abhors such a system of civil government, for it will make an inequality among the people, and set up a number of lords over the rest. In the next place it is said, that representation should be determined entirely according to the number of inhabitants. But, to have a state represented adequately upon this plan, would puzzle the brain of a philosopher. Indeed, to effect it, some townships must be cut to pieces, others tacked together---and, at best, many parts would remain defective. And, if we look into this matter critically, we shall find it still more egregious. It is an old observation, that *political bodies should be immortal*---a government is not founded for a day or a year, and, for that very reason, should be erected upon some invariable principles. Grant, for a moment, that the number of people is the only measure of representation ; as often then, as the former increases or diminishes, the latter must of consequence ; as of ten, as the inhabitants in a state vary their situation, the weight
of

of legislation changes; and, accordingly, the balance of power is subject to continual, and frequently unforeseen alterations. Turn which way we will upon this plan, we shall find unsurmountable difficulties: So that those, who have adopted this measure, are either too short-sighted, to see the future interests of society, or so secret and designing, as to take the advantage of such undeterminate principles. The question now comes in, how shall we find an *invariable* free mode of representation? This I own is a delicate point; yet, if we enter into the matter, doubt not, but that we shall fix upon something useful.

Every government is necessarily confined to some extent of territory. It may happen by some peculiar circumstances, that some parts of the land in a state may be at first, much more peopled than others: Yet, in time (excepting the metropolis, and some places of trade) they become generally alike settled. We find that this was the case in the old republics of Greece, and likewise at present in Switzerland; indeed it is commonly so through the civilized kingdoms of Europe and Asia. The reasons for this are handy. The God of nature has formed the different situations of land through a government, mostly with equal advantages: Some parts are proper for agriculture, others for trade and commerce; some produce one sort of commodity, and some another. By this means it is that people have intercourse together, and are at length equally diffused within the limits of a state. We will now come nearer to the point before us. It has been said, that a government should be formed, if possible, upon so solid a foundation, as to be liable to no alterations, on account of its internal defects. A well regulated representation is the only security of our liberties: We have seen that it cannot depend upon taxation, nor the number of inhabitants solely, without being subject to changes and innovations; and to have it depend on both taken together, will render it intirely capricious. Land is the most solid estate that can be taxed, and is the only permanent thing. Let that, therefore be divided into equal convenient parts in a state, as is the case with our townships, and let the inhabitants possessing the said parts or townships, be severally and distinctly represented. By this means, the plan of the legislature will be fixed, and an earnest of it handed down to posterity, for whom politicians were rather made, than for those who live in their time.

But it may be objected by some, that live in a government where towns are very unequally settled, that there is no right or justice in the inhabitants having the same advantage as to representation, since those, that live in the larger towns, must not only support their own, but, also, help to support the representatives of the smaller ones. The objection is trifling. Every government is an entire body politic, and therefore, each particular member in the legislature does not represent any distinct part, but the whole of the said body. Blackstone's words are these, "For it is to be observed, that though every member is chosen by a particular county or borough, yet, as is justly observed by Lord Cooke and others, when in parliament, he serves for the whole nation." The consequence is, that if every incorporate town, small as well as large, has a right to chuse a representative, he does, when chosen, represent the whole government; and therefore ought to be paid by it. Besides, the inhabitants of the smaller towns do, upon this plan, pay their proportion for representation, and a small sum may be as much for a poor man, as a large sum for a rich man, agreeable to what the scripture observes of the widow, that cast her mite into the treasury. Again, shall we sacrifice a free constitution barely to avoid the trifling expence of a free government. But is not there enough said yet, to satisfy the objectors! Then let every town support its own representative; but, in consideration of that, place the seat of government in the center of the state. This inequality will last but for a few years, the smaller towns are growing; nor does it become patriots to study their own ease, at the expence of embroiling their children.

WHAT has been proposed I cannot but think to be the only sure foundation to form a legislature upon;--all others are wavering and uncertain.

Reply. THE question now, that closes the whole, arises what it is that ought to be the qualification of a representative? In answer we observe, that fear is the principle of a despotic, honour of a kingly, and virtue is the principle of a republican government.---Social virtue and knowledge, I say then, is the best, and only necessary qualification of the person before us. But it will be said, that an estate of two hundred, four hundred pounds, or some other sum is essential. So sure as we make interest necessary in this case, as sure we root out virtue, and what will then be

of the genuine principle of freedom? This notion of an estate has the direct tendency to set up the avaricious over the heads of the poor, though the latter are ever so virtuous. Let it not be said in future generations, that money was made by the founders of the American states, an essential qualification in the rulers of a free people. It was what never was known among the Antients: And we find many of their best leaders in very needy circumstances. Witness the Athenians, Cimon, and Aristides; the Romans, Numa, Cato, and Regulus. Thus I have gone through what I had to say on some interesting points of government: And it is proposed with more cheerfulness, as many of the sentiments oppose the present regulations of most of our states.

Now is the time for the people to be critical in establishing a plan of government: For they are now planting a seed, which will arise with boughs, either extended to shelter the liberty of succeeding ages, or only to screen the designs of crafty usurpers.

THAT this short treatise may not be left imperfect, I will only propose, for the consideration of the people, a concise plan, founded on the principles that have been laid down.

It is observed then, in the first place, that the freemen of each incorporated town, through a state, shall chuse by ballot, at an annual meeting, one person respectively, whom they shall think suitable to represent them in a general assembly.

2dly, THAT, if the metropolis, and some particular large places, may require an additional number of representatives, it may be granted them by the general assembly as the latter shall think proper.

3dly, THAT the general assembly should meet at certain times, twice every year; and, if the state is extensive, there may be two seats of government, in which case, the said assembly are to convene at them, once in their turns.

4thly, THAT the people chuse annually by ballot in their town meetings, a council, consisting of twelve persons, through the government at large, whose business shall be to help in preparing matters for the consideration of the assembly, to assist them with their advice: And lastly, it shall be their duty to inquire into every essential

tial defect in the regulations of government, and to give the people seasonable notice, in a public way, with their opinion respecting the matter.

5thly, THAT they likewise chuse annually a first executive officer, without any concern in the legislature; but it shall be his duty to transact such occasional business, as the assembly may devolve upon him: And that he be the general commander of the militia, and in these capacities the people, if they please, may stile him a governor---and, in case of his incapacity, a lieutenant, &c. may be appointed as before, to act occasionally in his stead.

6thly, THAT said governor, with advice of any three of the council, may, at any time, call a special assembly on extraordinary business.

7thly, THAT the freemen vote annually, in their town meetings respectively, for the judges of the superior court, at large through the government.

8thly, THAT the judges of the inferior court, attorney's general, probate judges, registers, &c. be chosen, in manner before mentioned, by the inhabitants of each respective county: And, that the justices of the peace be also chosen by the people of each respective town, in proportion to the representatives.

9thly, THAT there be one general proxy day agreed upon for the people through the government, to vote for the officers as aforesaid and that the representatives, likewise, fix upon one day of election, to be annual at which time the votes are to be brought in from the different towns and examined; and the persons for governors, a council, judges, registers, sheriffs, &c. are to be then published through the state.

10thly, THAT all the resolves of every assembly be conveyed from time to time, by the representatives to each respective town, and there enroled for the inhabitants to see, in order to instruct their said representatives.

11thly, THAT no person shall hold too public offices in a state, at the same time.

12thly, THAT no person shall be capable of holding any public office, except he professes a belief of one only invisible God, that governs all things; and that the bible is his revealed word; and that he be also an honest moral man.

13thly, THAT any freeman through the government may freely enter a complaint of defect or misdemeanour to the general assembly, against any of the executive state officer

officers, and if the assembly think there is just grounds for the said complaint, they may suspend the person so complained of in his office, appoint another for the present in his stead---but, be obliged to publish in the superior, or county courts, according as the person sustained his said office, their proceeding in that matter, with all their reasons for them; that the people, if they please, may drop the said person or persons, in their next annual election.

14^{thly}, THAT the assembly may have power to negative any of their members a seat; but, should they do it, be obliged to inform the town or towns, that sent him or them, so negatived, with their reasons for such procedure, that the inhabitants may have an opportunity to chuse another or others, as soon as conveniently may be, which second choice it shall not be in the power of the said assembly to negative.

15^{thly}, THAT the particular town officers be chosen yearly by the inhabitants, as usual; and that each town clerk be the recorder of deeds.

16^{thly}, THAT any orderly free male of ordinary capacity, and more than 21 years of age, having resided one year in a town, may be a legal voter, during his continuance; but, if he should be absent afterwards steadily more than a year that he should be divested then, of the privilege of voting in said town as if he never had resided there: Provided, he has not a real estate in the aforesaid town of at least one hundred pounds value lawful money.

17^{thly}, THAT any legal voter shall be capable of holding any office, unless something that has been said to the contrary.

It is a darling principle of freedom, that those who make laws, ought not to execute them: But, notwithstanding, should it be inquired, whether there may be a proper course of appeals, in some important matters, from the superior court to the general assembly, I would answer affirmatively. The cases between man and man, together with their circumstances are so infinite in number, that it is impossible for them all to be specified by the letter of the law. The judges, therefore, in many cases, are obliged not to adhere to the letter, but to put such a construction on matters, as they think most agreeable to the spirit and reason of the law. Now, so far as they are reduced to this necessity, they assume what is in fact the prerogative of the legislature

legislature, for those, that made the laws ought to give them a meaning, when they are doubtful. To make then the application : It may happen, that some very important cases may be attended with such circumstances, as are exceptions from the written law, agreeable to the old maxim, *summum jus, summa iniuria*; *extreme, right is extreme wrong* ; or they may come under doubtful constructions. In either of these instances, the person, that is cast by the verdict, makes his appeal from the court to the general assembly ; that they would virtually, in deciding his case, make a regulation, or rather in a legislative capacity, put a lasting construction on the written law, respecting affairs of that particular nature. Thus, by examining the principles of such appeals, we find they imply not that the legislative act in an executive capacity.

LASTLY, let every government have an equal weight in the general congress, and let the representatives of the respective states be chosen by the people annually, by ballot, in their stated town meetings ; the votes to be carried in, and published at the appointed election, as with respect to a governor, council, &c. in manner aforesaid ; and the assemblies of the respective states may have power to instruct the said representatives from time to time, as they shall think proper.

It appears that the forms of government, that have hitherto been proposed since the breach with Great-Britain, by the friends of the American states, have been rather too arbitrary. The people are now contending for freedom, and would to God they might not only obtain, but likewise keep it in their own hands. I own myself a friend to a popular government, have freely submitted my reasons upon it. And although the plan here proposed, might not ever ^{have} been adapted as yet, nevertheless, those as free, have alone secured the liberties of former ages ; and a just notion of them has guarded the people against the sly insinuations and proposals of those, of a more arbitrary turn, whose schemes have a tendency to deprive mankind of their natural rights.

O[®]

arch
ations



